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No. 660.

IN THE

Supreme Court of the United States

OCTOBER TERM 1951

JACK PRINCIPALE,

Petitioner,

against

ASSOCIATED GAS AND ELECTRIC COMPANY,
LEWIS M. DABNEY, JR., Trustee,

ASSOCIATED GAS AND ELECTRIC CORPORATION,
ALLEN E. THROOP, Trustee,

GENERAL PUBLIC UTILITIES CORPORATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

ALLEN E. THROOP,
Attorney for General Public Utilities Corporation, for Lewis M. Dabney, Jr., Trustee of Associated Gas and Electric Company, Debtor, and for himself as Trustee of Associated Gas and Electric Corporation, Debtor.

WILLIAM W. GOLUB,
Of Counsel

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Opinions Below

The opinion of the United States District Court for the Southern District of New York dismissing the amended complaint herein is set forth at R. 18-20. It has not been officially reported. The denial by the District Court of petitioner's motion for reconsideration was without opinion (R. 39-40).

The opinion of the United States Court of Appeals for the Second Circuit is reported at 192 F. 2d 1016.

Jurisdiction

The judgment of the United States Court of Appeals for the Second Circuit was entered on December 20, 1951 (R. 62). That Court's order denying a petition for a rehearing was entered on January 4, 1952 (R. 68). The petition for a writ of certiorari was filed on March 19, 1952. The jurisdiction of this Court is apparently invoked under Section 1254(1) of the Judicial Code.

Statement of the Case

Orders Below. Petitioner, acting *pro se*, appealed to the Court of Appeals from two orders of the District Court:

(1) An order entered July 21, 1950 (per McGohey, D. J.) dismissing the amended complaint in petitioner's civil action (R. 21-22); and

(2) An order entered February 10, 1951 (per Coxe, D. J.) denying petitioner's motion for an order which would vacate Judge McGohey's order, reopen the reorganization proceedings of Associated Gas and Electric Company ("Ageco") and Associated Gas and Electric Corporation ("Agecorp"), and grant other comparable relief (R. 39-40).

The notice of appeal was filed on March 15, 1951 (R. 41).

The Court of Appeals dismissed the appeal from Judge McGohey's order of July 21, 1950 because it had not been filed within the time prescribed by Rule 73(a) of the Federal Rules of Civil Procedure (R. 61-62). The Court also affirmed Judge Coxe's order.

Background of Petition. The present attempt to obtain a review by this Court is the latest of a long series of futile efforts by petitioner, outlined below, to salvage something from his holdings of Ageco securities which were found to be worthless in the reorganization proceedings of Ageco

and Agecorp under Chapter X of the Bankruptcy Act. Despite the consummation of the reorganization plan in 1946, petitioner now for the third time in the past four years has beaten a path to the Court of Appeals and to this Court in pursuit of his quixotic aims. In each instance, he was denied relief by the Court of Appeals; and on the two previous occasions he unsuccessfully sought review by this Court.

Unaided by counsel and, indeed, in contradiction of the only legal advice he has received (R. 19), petitioner has persisted in his attempts to overrule prior adjudications even though he has no new facts or arguments to present in support of his plea. Moreover, the very prosecution of this litigation represents a flagrant disregard by petitioner of his vulnerability to a citation for contempt of the final decree in the reorganization proceedings (R. 18-19, 59).

Petitioner's Holdings. Petitioner is the holder of Ageco Convertible Obligations and Preferred Stock which he acquired in the open market (R. 4-5).

The Plan of Reorganization. The plan of reorganization ("the Plan") of Ageco and Agecorp, after its approval by the Securities and Exchange Commission and confirmation by the District Court, was consummated in January 1946 (R. 10). Under the Plan, the Debtors were merged. Ageco, with its name changed to General Public Utilities Corporation ("GPU"), became the surviving company, and its securities were issued to participating security holders and claimants (R. 10). The Plan excluded from participation certain classes of Ageco securities, including those held by petitioner (R. 11).

The status of these securities had previously been the subject of extensive litigation conducted by protective committees and the Trustees of the two Debtors. Two decisions of the Court below made it clear that Ageco Convertible Obligations and Preferred Stock in the hands of non-original holders, such as petitioner, were properly excluded from participation under the Plan, and that the Plan was

fair and equitable in providing for this exclusion. *Elias* v. *Clarke*, 143 F. 2d 640 (2d Cir. 1944), cert. denied 323 U. S. 778 (1944); *In re Associated Gas and Electric Company*, 149 F. 2d 996, 1007-1009 (2d Cir. 1945), cert. denied sub nom. *Elias* v. *Clarke*, 326 U. S. 736 (1945).

The decision of the District Court approving the Plan, affirmed by the decision last cited, found the value of the combined assets of the Debtors, representing primarily the investments of the Debtors in subsidiary companies, to be somewhat less than $115,000,000, whereas the face value of debt securities senior to securities of the classes held by petitioner was about $258,000,000. *In re Associated Gas and Electric Company*, 61 F. Supp. 11, 58 (S.D. N.Y. 1944).

Final Decree. The final decree in the reorganization proceedings enjoins the institution or prosecution of actions to enforce any claim against the Debtors or their Trustees or the properties of GPU otherwise than in accordance with the Plan (R. 59).

Petitioner's Previous Actions. After the Plan had been consummated, petitioner sought to establish a right to share in the reorganization despite the earlier decisions excluding securities held by him from participation. The Court of Appeals ruled against him and this Court denied review. *Principale* v. *General Public Utilities Corporation*, 164 F. 2d 220 (2d Cir. 1947), cert. denied 333 U.S. 844 (1948), rehearing denied 333 U.S. 878 (1948).

Thereafter, petitioner moved in the District Court for an order giving him "equity rights and participation in the assets" of GPU on various grounds, including newly discovered evidence and fraud. The motion was denied, the Court of Appeals affirmed the order below, and again this Court denied review. *Principale* v. *General Public Utilities Corporation*, 174 F. 2d 479 (2d Cir. 1949), cert. denied 338 U.S. 831 (1949).

The Complaint. Undaunted by these repeated rebuffs, petitioner served the complaint herein on March 24, 1950.

In his amended complaint, he alleges that he is not seeking to establish any rights under the Plan (R. 5). The theory of his action defies analysis. He appears again to assert some vague equitable right to share in the assets of GPU. But however elusive his theory may be, whatever claim he has asserted is clearly in derogation of the Plan.

Judge McGohey's Order. For this reason, and in order to put an end to this incessant and harassing litigation, respondents moved for an order adjudging petitioner in contempt of the final decree (R. 10-13). This motion was at first granted after argument by Judge McGohey (R. 19).

In response to a plea by petitioner, however, a contempt order was not entered. Instead, on the suggestion of Judge McGohey, respondents withdrew the contempt motion and moved to dismiss the amended complaint (R. 18-20). This motion was granted (R. 21-22).

Judge Coxe's Order. Six months later, petitioner brought on his motion to vacate Judge McGohey's order and to reopen the reorganization proceedings (R. 25-35). It again was apparent that petitioner had nothing new to offer in support of his endless search for a pot of gold (R. 36-38). Judge Coxe accordingly denied his motion (R. 39-40).

POINT I

No Ground for Certiorari Exists

The petition discloses none of the grounds specified in Rule 38(5)(b) of this Court's rules for the granting of a writ of certiorari. The only conceivable basis for review by this Court in this case would be a claim of conflict. Petitioner, however, has made no suggestion of a conflict between the decision of the Court below and decisions in other Circuits on the same matter. Nor has he asserted any conflict with applicable decisions of this Court.

POINT II

There is No Merit in Petitioner's Claims

Petitioner has presented no basis for any relief. His principal contention seems to be that the Plan was unfair in excluding the securities held by him from participation. Basically, therefore, he is now making the identical arguments which this Court has refused to entertain on four previous occasions.

To avoid a plea of res judicata, petitioner has asserted that he is not seeking to recover under the Plan. But this assertion has merely fastened him to the other horn of his dilemma. To the extent that his action involves a flank attack on the Plan, it is obviously in violation of the final decree (R. 59). Petitioner's conduct has been contumacious of the District Court and should not be condoned by this Court.

CONCLUSION

The decision of the Court below is correct and no reason has been advanced for its review by this Court. The petition for a writ of certiorari should therefore be denied.

Dated New York, N. Y., April 14, 1952.

Respectfully submitted,

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Attorney for General Public Utilities Corporation, for Lewis M. Dabney, Jr., Trustee of Associated Gas and Electric Company, Debtor, and for himself as Trustee of Associated Gas and Electric Corporation, Debtor.

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